

Three years ago, the assistant Democratic leader was asked about the Senate majority going “nuclear” and killing the legislative filibuster. Here’s what Senator DURBIN had to say:

I can tell you that would be the end of the Senate as it was originally devised and created going back to our Founding Fathers.

That was Senator DURBIN in 2018, just a few years ago. Now he argues the opposite.

Now I understand our colleague has rotated through several different explanations for his reversal in just the last few days.

First, our colleague from Illinois indicated he changed his mind—changed his mind—because Republicans, and I specifically, had used the filibuster so much in the intervening years. But, Mr. President, Republicans were in the majority the whole time. We were in the majority the whole time. It was the Democrats who used the filibuster in the minority in 2018, 2019, and 2020—not Republicans. That argument makes no sense whatsoever.

A few days later, there was a new made-up rationale: It is just that the Senate hasn’t been getting anything done, so the institution needs an overhaul. Except we have just had a uniquely terrible year to make that argument.

Last year was not a good year to make that argument. We passed five—five—bipartisan COVID bills with big bipartisan majorities that spent the most money in American history and helped save the country. Don’t see any obstruction in that. We passed a historic bipartisan bill for national parks and public lands. Didn’t see any outrageous use of the filibuster on that.

So there is fake history swirling all around the discussion—fake history.

About a year ago, former President Obama launched a new, coordinated, and very obvious campaign to get liberals repeating the claim that the Senate rules are somehow a relic of racism and bigotry. That came just a month after Democrats had used the filibuster to kill Senator TIM SCOTT’s police reform and anti-lynching bill.

So these talking points are an effort to use the terrible history of racism to justify a partisan power grab in the present. It is not unlike what we saw last summer, when some protest mobs ended up defacing statues of people who actually crusaded for justice—like Abraham Lincoln, Ulysses S. Grant, and the abolitionist Matthias Baldwin—mistakenly damaging good institutions because of our troubled past.

Multiple fact checkers have torn into this simplistic notion that the rules of the Senate are rooted in racism: “Historians told PolitiFact that the filibuster did not emerge from debates over slavery or segregation.” One scholar’s account was that “the very first Senate filibuster was over a bridge across the Potomac River.”

The very first filibuster was over a bridge over the Potomac River.

The junior Senator from Massachusetts just got three Pinocchios from

the Washington Post for these arguments.

Their look—the Washington Post’s look—at history found “the first recorded filibusters in the Senate concerned issues such as where to locate Congress, what to do about Andrew Jackson’s censure over withdrawn federal deposits, who would be appointed to a publication called the Congressional Globe and whether to create a national bank”—nothing to do with racism.

But I am curious. If my Democratic colleagues really believe what they are saying, did they themselves use a racist tool against Senator SCOTT’s police reform bill just last year?

Did they use a racist relic when they delayed the CARES Act or blocked legislation to protect unborn babies who can feel pain?

Were Senators SCHUMER and DURBIN and their 33 colleagues who signed that letter all endorsing a racist relic?

Or is our colleagues’ story that the filibuster was not an offensive relic as recently as last summer but magically—imagine this—just magically, within a year, magically became an offensive relic the instant the Democrats came to power? All of a sudden, it is an offensive, racist relic when the Democrats came to power. Jaw-dropping hypocrisy. These backflips insult the intelligence of the American people.

The far left is desperate to change the subject to the 1960s because they want people to forget how Senate Democrats behaved just last year. This is not about the 1960s. It is not a racist relic.

Look, if some of my Democratic colleagues want to keep lobbying two of their colleagues to go back on their word, they should at least have the courage to be honest.

The far left wants Democrats to break the Senate rules for no other reason—no other reason—than they want more power. They want more power. The same people who are trying to overturn a certified election result over at the House want to break Senate rules so they can override the election laws of all 50 States from right here in Washington. It is that simple. And it is not going to be hidden by a coordinated campaign to change the subject.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read nomination of Shalandia D. Young, of Louisiana, to be Deputy Director of the Office of Management and Budget.

Mr. MCCONNELL. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FILIBUSTER

Mr. THUNE. Mr. President, talk continues to swirl about eliminating the legislative filibuster here in the U.S. Senate. The Democratic leader has threatened that if Republicans don’t vote the way he wants them to vote on legislation, eliminating the filibuster will be on the table.

In an interview where he issued his threat, the Democratic leader made it very clear that he is not inviting Republicans to work with Democrats on legislation. This isn’t an invitation for both parties to sit down at the table and arrive at an agreement that both parties can support. No. This is an invitation for Republicans to support exactly what Democrats want or face the consequences.

It is ironic that the Democratic leader would be taking that position today because this is what he was saying back in 2017 about the legislative filibuster. This is the Democratic leader saying the “legislative filibuster” is “the most important distinction between the Senate and the House. Let’s find a way to further protect the 60-vote rule for legislation.”

So the Democratic leader was very supportive of this back in 2017, when they were using it extensively to try and stop or slow Republican legislation.

The assistant Democratic leader, the Democratic whip, Senator DURBIN from Illinois, said this in January 2018:

I can tell you that would be the end of the Senate as it was originally devised and created going back to our Founding Fathers.

“[G]oing back to our Founding Fathers,” referencing the legislative filibuster and how important it was historically here in the U.S. Senate.

Well, about that same time, 2017, 61 Senators out of 100 here in the U.S. Senate—61 out of 100 Senators—signed a letter in which they supported retention of the legislative filibuster. In fact, it goes on to say:

We are writing to urge you—

And this is to the Senate leaders at the time, Senators MCCONNELL and SCHUMER—

to support our efforts to preserve existing rules, practices, and traditions as they pertain to the right of Members to engage in extended debate on legislation before the United States Senate. Senators have expressed a variety of opinions about the appropriateness of limiting debate when we are

considering judicial and executive branch nominations. Regardless of our past disagreements on that issue, we are united in our determination to preserve the ability of Members to engage in extended debate when bills are on the Senate floor.

Sixty-one Senators, including over 30 Democrats, on record as recently as 2017 in support of the legislative filibuster—over 30 Democratic Senators, including the Democratic leader and the Democratic whip.

Well, what has changed? Because now they have done an abrupt reversal, a complete 180. I mean, they are spinning around so fast, it makes your eyes glaze over. What an incredible versatility of conviction they have demonstrated on this issue.

And you think about the reason for it. What are they arguing? Well, they are saying the Republicans have been misusing the filibuster. That is a little bit ironic, given the fact that Republicans have been in the majority for the past 6 years. Republicans took the majority in January of 2015 and held it until January of 2021.

So the past 6 years it has been the Democrats who were in the minority. They would be the ones exercising the legislative filibuster, and they used it extensively. They used it extensively last year to block legislation, repeatedly, over and over and over again.

And Republicans, at the time, were under a lot of pressure to get rid of the legislative filibuster, including by the President of the United States, over and over and over, saying Republicans need to get rid of the legislative filibuster.

Republicans, being consistent in their position—the 61 Senators, Republicans who signed this letter, including me, have been consistent in our position, even when we were in the majority, even when the Democrats were using the filibuster to block legislation that we were trying to advance, that we needed to maintain the filibuster because it was important to the institution of the Senate, and it required bipartisan cooperation. It required a level of comity to get legislation passed, and it made sure that the minority was represented in legislative solutions that were produced by the U.S. Senate. We have been consistent in that position, even when it meant taking on our administration, our President—over, over, and over again.

So the Democrats' argument now is that we have to get rid of the legislative filibuster because Republicans have been misusing it. How was that even possible? We were in the majority. The legislative filibuster is a tool used by the minority. It was used by the Democrats over and over and over again the past 6 years, but their argument now is that the Senate is not functioning, the Senate is not producing legislation? Really?

Last year, Republicans were in the majority. We passed out of the Senate five coronavirus relief bills with huge bipartisan majorities—huge bipartisan

majorities—responding to the greatest crisis facing this country, both health crisis and economic crisis.

We responded to it in a bipartisan way, honoring the rules and the traditions of the Senate, which were created by the Founders to make the Senate a place unique in all the world, where the rights of the minority are honored, which required cooperation and working together to get results.

And we produced results, in spite of the fact that Democrats consistently filibustered legislation. Now, there were certain pieces of legislation we didn't get passed. We didn't pass policing reform. Senator TIM SCOTT offered a piece of legislation that included all kinds of provisions that would have addressed that important issue for our country, and the Democrats filibustered it, over and over and over again. So we didn't get the 60 votes to get policing reform across the finish line.

But it is incredibly ironic. I mean, hypocrisy is not something that is unknown in politics, but hypocrisy on this level is unprecedented. The Democratic leader, the Democratic whip, and over 30 Democratic Senators have said as recently as 2 years ago, 3 years ago, that we need to preserve the legislative filibuster because it is true to the tradition of the Senate and what the Founders intended in terms of the role that the Senate was supposed to play in our democracy.

And here we are, 2 or 3 years later, not because the Republicans had been misusing the filibuster, because the Republicans have been in the majority. We have been fending off the use of the filibuster by Democrats. They had no problems with the filibuster when they were using it as a tool at their disposal to block Republican initiatives.

The first CARES bill they filibustered multiple times, and it forced us to sit down with them and forge a compromise that, in the end, got 96 out of 100 votes in the U.S. Senate. But now the shoe is on the other foot. They are in the majority, and they have got all these things they want to get done, all this pent-up agenda.

I would argue that what is happening here is all the outside groups, all the leftwing groups that have all these things they want to get done, all of a sudden have concluded that notwithstanding their use of the filibuster to block Republicans from accomplishing their agenda for the past 6 years, now that the shoe is on the other foot, we are in the majority and we have got power, we are going to do away with over 200 years of history—200 years of history that was put in place by the Founders to require the U.S. Senate to be different than the House of Representatives.

The House of Representatives does everything by simple majority. They have a Rules Committee. I served for three terms there. They have a Rules Committee that prescribes, basically, what legislation can come to the floor, what amendments are made in order,

how much time is allowed for debate on each amendment. Everything is very structured. It is very organized. It is all done by democratic rule—majority rule, simple majority rule.

The Senate was created to operate differently by the Founders. And here we are having a debate about whether we are going to honor that tradition, that heritage, that legacy, that vision the Founders had when it came to how the U.S. Senate should operate.

Earlier this month, one Democratic Senator suggested that we should get rid of the filibuster because it is “undemocratic.” Undemocratic. In other words, it prevents the majority from doing everything it wants to do. But, as I said on the floor last week, letting the majority do everything it wants to is not what the Founders had in mind. The Founders recognized it wasn't just Kings who could be tyrants; they knew majorities could be tyrants, too, and that a majority, if unchecked, could trample the rights of the minority. So the Founders combined majority rule with both representation and constitutional protection for the minority. They established safeguards—checks and balances—throughout our government to keep the government in check and ensure that the rights of the minority were protected, and one of those safeguards was the Senate.

In the House of Representatives, as I said, majority rule is emphasized, and the Founders could have left it at that. They could have stuck with a single legislative body, but they didn't. Why? Because they were worried about the possibility of tyrannical majorities in the House endangering the rights of the minority.

The author of Federalist No. 62 notes:

A senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy. . . . Secondly. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.

That is from Federalist No. 62.

So the Founders created the Senate as a check on the House of Representatives. They made the Senate smaller and Senators' terms of office longer, with the intention of creating a more stable, more thoughtful, and more deliberative legislative body to check ill-considered or intemperate legislation and attempts to curtail minority rights.

As time has gone on, the legislative filibuster has become perhaps the key way the Senate protects minority rights. The filibuster ensures that the minority party has a voice in the Senate. It forces compromise. It forces bipartisanship.

Even in the now rare case when a majority party has a filibuster-proof majority in the Senate, the filibuster still

forces the majority party to take into account the views of its more moderate or middle-of-the-road Members, thus ensuring that more Americans are represented in legislation.

People tend to focus on the fact that the filibuster protects the country from any one party's most extreme legislation, but the truth is—the truth is—the filibuster is probably the biggest reason that any bill in the Senate is ever bipartisan. Routine spending bills, farm bills, Defense authorization bills—the main reason many of these bills are ever bipartisan, outside of divided government, is because the filibuster forces the parties to compromise. Don't believe me? Just look at how the House has handled these bills in recent years.

Democrats were eager to take advantage of the filibuster's protection for minority rights when they were in the minority, but now that they are in the majority, they don't want anything standing in their way. They don't want to have compromise. They don't want to have to consider the Americans who didn't vote for a Democratic agenda. They want to do whatever they want, whenever they want it.

Democrats' disregard for minority rights would be troubling even if they had a substantial majority in the Senate. The voice of the minority deserves to be heard even when the minority is substantially outnumbered. But it is particularly outrageous that Democrats are so determined to sweep away protections from minority rights when they barely—barely—have a majority in the Senate and certainly don't have a mandate. In fact, Democrats don't have a real majority at all; only a technical one. The Senate is divided 50 to 50. The only reason Democrats have a deciding vote in the Senate is because the Vice President is a Democrat. In the House, Democrats' majority narrowed substantially in the November election.

Now, as for the Presidency, while certainly a Democrat won the election, it is worth noting that the only candidate who could win the Democratic primary was a man historically regarded as a moderate. Even among Democrats, Democrats' far-left liberal candidates did not fare so well.

If there was any mandate in the election, it was a mandate for moderation. It was a mandate for compromise, for pulling the country together. But Democrats are running away from unity and bipartisanship as fast as they can. They are determined to leverage their weak victory into the implementation of a partisan, far-left agenda.

There are two bills that have driven the conversation around eliminating the filibuster in recent weeks. They are H.R. 1, an election bill, and H.R. 5, the so-called Equality Act.

The first bill is a truly outrageous power grab, an attempt to federalize election law and eliminate protections for election integrity. Democrats have discarded years of important bipartisan

work on election security and integrity in order to permanently boost Democrats' chances of winning majorities. The second, the so-called Equality Act, is an unprecedented attack on the First Amendment that would substantially restrict the rights of Americans to live by their faith. These are the bills that Democrats think should be shoved through by the narrowest of majorities.

There have been suggestions that eliminating the filibuster is the cure for partisanship and gridlock in the Senate. Well, it might be the cure for gridlock in the sense that the majority could steamroll through whatever it wanted, whenever it wanted, but you don't cure partisanship by making it easier for the majority to be partisan.

Eliminating the filibuster isn't going to eliminate partisanship; it is going to heighten it. Take away the filibuster, and the majority party has zero reason—zero—to take into account the views of the minority. What eliminating the filibuster will do is ensure that one party has no voice at all in the U.S. Senate, no matter how many Americans that party represents.

A couple of weeks ago, we got a preview of what life would look like in a filibuster-less Senate when Democrats passed their so-called COVID bill under the simple-majority rules of reconciliation. There wasn't a lot of gridlock since reconciliation allowed Senate Democrats to force their bill through, but there was plenty of partisanship. Democrats made it very clear that while Republicans were welcome to vote for their bill, Republican ideas were not welcome at the table.

Democrats knew that they didn't need Republicans to pass their legislation, which empowered them to completely reject Republican input in drafting the bill and to load the bill with Democratic priorities, from a bailout for union pensions, to a State slush fund heavily weighted in favor of blue States, to the omission of long-standing Federal restrictions on using taxpayer dollars to pay for abortions. It was quite a contrast to the five bipartisan COVID bills passed under the filibuster rule in a Republican-led Senate, which were focused on fighting the virus rather than shoving through partisan priorities.

While their recent narrow majority has seemingly erased all memory of their minority status over the last few years, I encourage my Democratic colleagues to remember just how much they valued the legislative filibuster during their time in the minority and how bitterly they regretted eliminating the judicial filibuster once President Trump became the beneficiary.

While Democrats might like to think that their time in power will last forever, it is a truth of American politics that sooner or later, no matter how powerful your majority, you end up in the minority again. I encourage my colleagues to think about that time

when they will be in the minority again and to ask themselves whether they really want to eliminate their voices and the voices of their constituents in future policy battles.

I yield the floor.

The PRESIDING OFFICER (Mr. PADILLA). The Senator from Alabama.

PROTECTING THE RIGHT TO ORGANIZE ACT

Mr. TUBERVILLE. Mr. President, last week, I spoke about a deeply flawed and misguided piece of legislation passed by the House—House bill H.R. 1 and now Senate bill, S. 1.

Today, I am going to talk about yet another bill from our colleagues in the House that would be terrible for my State of Alabama and for our country. It is called the Protecting the Right to Organize Act, better known as the PRO Act.

Like H.R. 1, the PRO Act represents a massive power grab by the Democrats here in Washington, DC, to override the will of the voters and State legislatures in a majority of the States in this country. Democrats want to force their ideas on States that refuse to adopt their progressive failed policies. Federal power grabs like these are unconstitutional and go against our entire system of government.

The PRO Act would overrule the right-to-work laws across the country and force tens of millions of employees to join a union. Currently, 27 States have right-to-work laws on their books, including Alabama. More States could join us in the future. Right-to-work laws give workers freedom, and more importantly, they give them the freedom to choose whether to unionize or not.

Alabama's right-to-work law has been a huge benefit for our State and for the people, helping to attract many businesses to our State. Take car manufacturing, for example. Beginning with Mercedes, in 1993, automakers like Toyota, Hyundai, and Honda all have large presences in Alabama. Their investment in our State has created a growing automotive supplier network, supporting roughly 150 companies in our State. Altogether, we have around 40,000 Alabamians employed in the automotive sector alone. Those jobs go on to support thousands more family members, all thanks to Alabama's right-to-work law.

The PRO Act would upend the economic growth we have seen in Alabama and in many States across the country. By forcing unionization on American workers, many industries would grind to a halt, and employers' costs would skyrocket, which could lead to a loss of many, many jobs. According to the State Policy Network, the PRO Act would destroy 57 million American workers who call themselves freelancers, in addition to the millions of salaried workers who would lose their right-to-work protections.

Unions, to some degree, have helped build our great country, but we need to give workers the ability to choose, not force them to be in a union. Right-to-